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August 14th, 2021

Initiative Coordinator
Office of the Attorney General
State of California
PO Box 944255
Sacramento, CA 94244-2550

RECEIVED

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Re: Request for Title and Summary for Proposed Initiative

**INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE**

Pursuant to Article II, section 10(d), of the California Constitution, I am submitting the attached proposed statewide ballot measure (The Elijah McClain Accountability Act) to your office. I request that you prepare a circulating title and summary of the measure as required by law. I have included with this letter the required signed statement pursuant to California Elections Code sections 9001 and 9608, and a check in the amount of \$2000. My address as registered to vote is shown on Attachment "A" to this letter.

Thank you for your time and attention to this important matter. Should you have any questions or require additional information, please contact Jai Hudson at: (714) 394-9823.

Sincerely,

Jai Hudson
People's Advocate

Elijah McClain Police Accountability Act

Introduction

This bill recognizes that it is not the final solution to a culture of police brutality, and it does not pose as such. Instead, this bill stands as a proposed minimum set of regulations that will end the ability of police officers to use excessive and/or lethal force against citizens without consequence within the current structure of the police system. Full restructuring and reform of police forces may take years to accomplish, and in the meantime, this bill can be enacted immediately and reduce unnecessary victimization and loss of life significantly. This bill does not conflict with the idea of making large-scale financial and structural changes to police forces; it is a proposed set of legislation that can be enacted while we formulate how to restructure police forces that can also serve to govern the restructured police forces we aim to create. The creators of this bill are actively working on potential ways of addressing problematic interaction between municipalities and their citizens, but this will take the form of several-hundred-page thoroughly researched documents, and we can make no guarantee on when we will be finished. We encourage you all to form your own policy initiatives, and we hope you can find a better solution faster than we can. In the meantime, we will continue to work as fast as we can without compromising the validity of our solution.

Preamble

Police brutality has been able to go unchecked for so long because police have a judicially created doctrine called qualified immunity. This means that police officers are immune from prosecution unless it can be shown that they knowingly violated a human being's civil rights as it relates to clearly established law. This reference to 'clearly established law,' as you know, makes prosecuting a police officer's action much more difficult than prosecuting the action of a citizen because unless an officer violated someone's rights in exactly the same way in prior case, the officer will receive immunity.

Qualified immunity for police officers has been able to continue for so long because police unions use a substantial amount of funding to influence local politicians to uphold it. Private unions are granted the right to organize, bargain, and strike under the National Labor Relations Act of 1935, but public unions have no such protection. In recognizing that police unions have limited legal rights, and certainly no right to influence politics or strike against public safety, this bill poses legal limits on police unions. The intent is not to punish the officers but allows for police unions to continue to exist in a limited capacity solely to bargain for police salaries and for the training necessary for officers to excel at their jobs. It compels a police union to dissolve if it uses funding or bargaining power to influence an election or an elected official, or if it influences police to strike against public safety.

Recognizing that the specific purpose of qualified immunity is to protect a public official in the event that he or she violates someone's human and civil liberties, this bill ends qualified immunity for police officers. This bill simply holds the officers to the same legal standard that any citizen is held. All citizens have the right to use force to defend themselves or others in service of public good, and the right to use lethal force in the face of a threat of death or great bodily harm. Qualified immunity shifts this

standard to involve an officer's perception of threat. Ending qualified immunity will hold officers legally responsible for accurately identifying threats and using only the objectively necessary amount of force.

Officers have often been afforded reduced charges, such as a manslaughter charge for killing an unarmed person. Under this bill, officers are subject to the same charges that would be brought against a normal citizen. For example, use of unnecessary force is assault, and shooting and killing someone is murder. In addition, in any case where any officer who pleads guilty or no contest to a charge involving excessive force, the officer should be immediately fired and barred from joining another police force. This is included in the process of decertification as in California Bill SB2 put forth by Steven C. Bradford currently in committee.

A citizen has the right to intervene in violence between other citizens in service of the public good. This is not so in the case of violence committed by a police officer against a citizen because only another police officer can intervene in such a case. Given this discrepancy, an officer has a heightened responsibility to intervene when another officer is using excessive force, and a heightened punishment is warranted when an officer chooses not to do so. This bill seeks consequences for officers who choose not to intervene in police violence as if the officers who fail to intervene committed the violence themselves.

As it stands, it is incredibly difficult to sue a municipality for the abuse of power of one of its officers. With the availability of modern screening modalities and training programs, granting the power to use force against civilians to an officer who has any chance of abusing that power is nothing short of gross negligence. As such, this bill holds municipalities legally and financially accountable for the actions of all of its officers.

Seeing as police officers count on each other in life or death situations, they have a special bond which often prevents them from reporting the misconduct of other officers. To mitigate this, this bill proposes that all officers wear body cameras which must be turned on during all interaction with the public. In order to prevent an officer who wishes to evade accountability from turning off their camera, this bill provides that missing footage of an incident will be legally interpreted by courts and investigative authorities as evidence of police misconduct. In addition, an easy path to report police misconduct is established and an investigation into all reports is mandatory.

Finally, this bill calls for increased training for police officers. Even an officer who doesn't have violent tendencies is likely to resort to violence if he or she feels his or her life is threatened. Officers feel threatened more than is necessary because they don't have adequate training to deal with the situations they encounter. For this reason, this bill calls for officers to spend 20% of work hours in continued training on peaceable interaction, de-escalation, proper threat identification, and minimal and appropriate use of force.

1. Laws governing the conduct of police unions.

- a. A police union shall be compelled to dissolve if the union, in its official capacity, or if any representative appointed to speak for the union, attempts to bargain for a change of law or public policy by enacting or threatening:
 - a.i. A concerted refusal of police officers to enforce any previously enforced law;

- a.ii. A reduction in enforcement of laws such that the municipality which employs the officers sees or would see reduced income from fines;
 - a.iii. A refusal to actively patrol or a reduction of patrolling;
 - a.iv. Or a refusal to respond, or a reduction in or delay of response, to any kind of crime.
 - b. A police union shall be compelled to dissolve if it uses funds to impact an election or the actions of an elected official by:
 - b.i. Donating to a candidate or a candidate's campaign, or;
 - b.ii. Donating to a Political Action Committee (PAC) or any other individual, group, or entity who intends to use the money to influence an election or a candidate, or;
 - b.iii. Buying advertising space for the purpose of promoting or denigrating a candidate, a public referendum, or a bill, or for the purpose of promoting the repeal or alteration of an existing law.
 - c. In the case of the dissolving of a police union, the funds of the union will be distributed to its members in direct proportion to the sum of their contributions.
 - d. After a police union is dissolved, officers may elect to form a new union, but no officials of the old union who had influence over the union's public-facing or internal policy may be elected to any position within the new union, or within any future union meant to serve police officers in part or all of the municipality that the old union organized for.
2. Laws governing qualified immunity.
- a. No provision of this bill shall be interpreted to enhance or extend qualified immunity granted to police officers.
 - b. An officer's frame of mind at the time force was used, and their judgment of the necessity of the use of force to the extent they used it at the time, shall have no legal bearing over the determination of the necessity of the force the officer used.
 - c. Qualified immunity in cases where use of force is involved shall be based on a reasonable and objective analysis of the necessity of the force to carry out an arrest or to defend the public from imminent danger such that:
 - c.i. If the officer uses the an objectively reasonable approximation of the minimum force necessary to bring about the safe resolution of an encounter, qualified immunity will stand, and;
 - c.ii. If an officer uses force objectively in excess of the amount required to bring about the safe resolution of an encounter, qualified immunity shall not apply, and;
 - c.iii. An officer found to be objectively using force in excess of what is necessary to bring about the safe resolution of an encounter shall be open to both civil and criminal penalties as if he/she was a regular citizen.
 - d. Qualified immunity shall not apply for officers using crowd control weaponry including but not limited to; tear gas, bean bag rounds, and rubber bullets to disperse a peaceful protest, regardless of local curfews or other decrees meant to limit the ability of a crowd to engage in peaceful demonstration. In addition:
 - d.i. A crowd which was engaged in peaceful protest prior to police directing the use of force including, but not limited to; tear gas, bean bag rounds, rubber bullets, or pushing or striking with riot shields or batons, shall be considered to be acting

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 - d.i. A crowd which was engaged in peaceful protest prior to police directing the use of force including, but not limited to; tear gas, bean bag rounds, rubber bullets, or pushing or striking with riot shields or batons, shall be considered to be acting

in self-defense when forcefully resisting police officers; thus, qualified immunity will not apply when using force against such a crowd.

- e. Qualified immunity in cases where threat of deadly force by the brandishing of an officer's sidearm is involved shall be based on a reasonable and objective analysis of the necessity of the threat of use of deadly force to protect the public from imminent danger such that:

- e.i. If the officer objectively needed to brandish his/her sidearm to deter an imminent danger to the officer or the public, qualified immunity shall stand, and;
- e.ii. If the officer objectively and reasonably did not need to brandish his/her sidearm to deter an imminent danger to the officer's person or the public, qualified immunity shall not stand, and;
- e.iii. An officer found to have brandished his/her sidearm at a person who did not pose a threat shall be open to the same civil and criminal penalties that a regular citizen would be.

3. Charges brought for use of excessive force.

- a. An officer found by a jury to have been objectively using excessive force, or who pleads guilty or nolo contendere to charges of use of excessive force:
 - a.i. Shall have no claim to qualified immunity, and;
 - a.ii. Shall be tried as if their actions were carried out as an ordinary citizen, and;
 - a.iii. Shall be immediately fired and be permanently barred from employment as a police officer within the United States of America and its territories.
- b. The following is a non-exhaustive list of charges in which an officer found guilty of use of excessive force may be convicted:
 - b.i. An officer who unnecessarily punches, kicks, chokes, restricts the ability to breathe of, or otherwise causes physical pain to a citizen shall be guilty of aggravated assault.
 - b.ii. An officer who unnecessarily employs a baton, taser, or other weapon, other than a firearm, against a civilian shall be guilty of assault with a deadly weapon.
 - b.iii. An officer who employs tear gas or rubber bullets against a crowd who is peacefully protesting, or against a crowd which was peacefully protesting prior to force applied by police officers, shall be guilty of assault with a deadly weapon.
 - b.iv. An officer found to have been using excessive force when he or she ends the life of a citizen shall be guilty of second degree murder or, if intent and planning can be proven, first degree murder.
 - b.v. An officer who unnecessarily ends the life of a civilian will be guilty of manslaughter instead of murder only in the case that the officer did not intend to use or threaten to use force against the civilian he/she killed.
 - b.vi. Aggravating Factors: Any member of law enforcement convicted of a crime against a member of a protected group, as outlined in California Penal Code 422.55, shall be subjected to the sentencing enhancements associated with committing a hate crime (California Penal Code 422.7, and California Penal Code 422.75).

4. Obligation of a police officer to intervene in another officer's use of excessive force.

- a. A police officer shall be deemed to have been obligated to intervene in another officer's use of excessive force if:
 - a.i. A jury determines that the officer's use of force was objectively excessive, or;
 - a.ii. The officer pleads guilty or nolo contendere to use of excessive force, and;
 - a.iii. The officer near the use of excessive force saw or objectively should have seen the use of excessive force and was physically close enough to the officer using excessive force to intervene.
 - b. A police officer who intervenes in another officer's use of excessive force must report the other officer's use of excessive force to the appropriate investigative agency (e.g. Internal Affairs) as soon as is reasonably possible.
 - c. A police officer who is objectively in a position to intervene in the use of excessive force and fails to do so shall be guilty of the same crime of which the officer who used excessive force is guilty.
 - d. An officer who intervenes in excessive force and does not report it to the appropriate investigative agency shall be guilty of obstruction of justice.
5. Obligation of municipalities issuing arrest and use of force powers to screen police officers.
- a. A municipality shall be assumed to be liable for psychologically screening police officers for violent tendencies, racist ideologies, and other predispositions which might lead to the use of unnecessary force, and for tracking officer misconduct and either re-training or firing violent officers, to the point that the municipality can be held financially responsible for violent police misconduct in civil court.
 - b. A municipality shall be held legally liable for the actions of all officers in which it vests the powers of arrest and use of force, with no exception made for any reason.
 - c. The municipality which employs a police force shall be responsible for finding the resources to screen, track, and discipline its police force without taking money from public health, educational, or social wellness programs, or from any other program aimed at providing a service to its citizens.
6. Police monitoring.
- a. All police shall be required to wear fully charged, active, unobstructed body cameras during all on-duty interactions with the public.
 - b. All body camera footage shall be uploaded to a public website within 72 hours after it is taken in a format searchable by officer name, date, and/or badge number.
 - c. Officers shall be responsible for maintaining the integrity of their respective body cameras such that:
 - c.i. If body camera footage which covers an event reported by a civilian to have been discriminatory, unnecessarily violent, or otherwise an instance of police misconduct, the missing body camera footage shall be assumed to have shown the reported police misconduct, and;
 - c.ii. The investigator looking into the claim must immediately report the incident report to the District Attorney's office with a note that body camera footage is missing, and;
 - c.iii. The District Attorney shall deem the missing body camera footage to be enough evidence to formally file charges against the officer for the alleged misconduct, and;

- c.iv. A court or jury shall take the missing body camera footage to be strong enough evidence to convict the officer of any crimes associated with the reported misconduct that is missing from body camera footage.

7. Reporting and investigation of police misconduct.

- a. All police websites shall prominently display on their home pages a link to report police misconduct, and all submissions shall be investigated by the appropriate authority within 72 hours of submission.
- b. All police stations must establish a hotline for reporting police misconduct, and prominently display the number to that hotline on their respective home pages. All calls reporting police misconduct must be followed up by a representative of the applicable internal investigative agency within 24 hours, and the claim must be investigated within 72 hours.
- c. At the conclusion of an investigation into police misconduct, the investigating agent must, as soon as is reasonably possible, send an email to the complainant including the conclusion of the investigation, how that conclusion was reached, a link to all body and/or dash camera footage of the incident, and, if applicable, a copy of the report sent to the District Attorney, and post a copy of all such information to a web page that is clearly linked to the police website's home page.
- d. The officer investigating an incident of police misconduct or police brutality shall use this bill as a guideline for considering the criminality of the misconduct such that:
 - d.i. The determination of whether or not force used was excessive shall be based only on a standard of objective reasonableness, and;
 - d.ii. The officer's perception of the reasonableness of force at the time of its use shall be ignored, and;
 - d.iii. Missing body camera footage shall be taken to legally prove that the alleged misconduct occurred, triggering an automatic submission of the case to the District Attorney's office.

8. Police training.

- a. 20% of police budget and man hours spent shall be shifted to training. Specifically;
 - a.i. Patrols and available response units will be reduced by 20%, and;
 - a.ii. 20% of an officer's time (i.e., if the officer works five full shifts, this would be equivalent to one full shift) will be spent in continued training on de-escalation, proper threat identification, proper use of non-lethal restraint and combat methods, diffusion of tense situations, and psychological relaxation methods for officers who find themselves fearing for their lives, and;
 - a.iii. This shall be paid for by re-allocating 20% of the police budget associated with patrolling and call response.